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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NEXTGEN INNOVATIONS, LLC,
Plaintiff,
v.
II-VI, INC. and FINISAR CORPORATION,
Defendants.

Case No. 21-cv-07477-NC

**JOINT NOTICE OF MOTION AND
MOTION TO STAY PENDING *INTER*
PARTES REVIEW OF THE
ASSERTED PATENTS**

Hearing Date: November 3, 2021

Hearing Time: 10:00 a.m.

Location: Robert F. Peckham Federal
Building
4th Floor, Courtroom 5
280 South 1st Street
San Jose, California 95113

Judge: Hon. Nathanael M. Cousins

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on November 3, 2021, at 10:00 a.m., or as soon thereafter as counsel may be heard, in Courtroom 5 of the United States District Court for the Northern District of California, San Jose Division, located at Robert F. Peckham Federal Building, 280 South 1st Street, San Jose, California 95113, Plaintiff NextGen Innovations, LLC (“NextGen”) and Defendants II-VI, Inc. (“II-VI”) and Finisar Corporation (“Finisar”) (collectively, “Defendants”) will and hereby do move this Court for an order staying this case pending the outcome of the *inter partes* reviews (“IPR”) of U.S. Patent Nos. 8,238,754 (“the ’754 Patent”); 8,958,697 (“the ’697 Patent”); 9,887,795 (“the ’795 Patent”); 10,263,723 (“the ’723 Patent”); 10,763,958 (“the ’958 Patent”); 10,771,181 (“the ’181 Patent”) (collectively, the “Asserted Patents”).

This case was filed in the Eastern District of Texas on October 30, 2020, and was served on Defendants in December of that year. ECF No. 1. Shortly thereafter, Defendants moved to transfer the case to this District (ECF No. 11), and the motion was granted on July 2, 2021. ECF No. 38. The transfer of the case took place on September 28, 2021. ECF No. 39. In the meantime, on August 6, 2021, Defendants filed petitions to institute IPR on the ’795, ’723, and ’181 Patents. On September 10, 2021, Defendants filed petitions to institute IPR on the ’697 and ’754 Patents. The remaining petition to institute IPR on the ’958 Patent is expected to be filed this week. The parties have agreed that a stay pending resolution of these IPR petitions is warranted.

Whether to stay litigation generally involves a consideration of three factors: (1) “whether discovery is complete and whether a trial date has been set;” (2) “whether a stay will simplify the issues in question and trial of the case;” and (3) “whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party.” *In re Cygnus Telecomms. Tech., LLC, Patent Litig.*, 385 F. Supp. 2d 1022, 1023 (N.D. Cal. 2005) (citations omitted). Each factor supports a stay in this case. First, this case remains in its infancy with almost no discovery exchanged, and no trial date. Second, a stay will promote efficient resolution of this dispute and prevent the needless waste of judicial and party resources litigating issues that may be eliminated or altered, particularly in view of the stipulation Defendants filed in the IPR proceedings regarding its agreement to “not present any ground of invalidity of [the Asserted Patents] in the NDCA Litigation

1 that [were] raised or reasonably could have been raised in the as-filed Petition.” *See, e.g.*, Ex. A,
2 Defendants’ IPR Stipulation (Ex. 1030 in IPR2021-01358). Third, because NextGen has agreed to
3 the requested stay, there cannot be any argument that the stay would unduly prejudice or present a
4 clear tactical disadvantage to NextGen.

5 In view of the foregoing, the parties jointly request that the Court enter an order staying this
6 case pending IPRs.

1 Dated: October 27, 2021

Respectfully submitted,

2 By: /s/ Erik J. Halverson

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22 *Not admitted in Virginia

ATTESTATION

I, Erik J. Halverson, an ECF user whose ID and password are being used to file this **JOINT NOTICE OF MOTION AND MOTION TO STAY PENDING *INTER PARTES* REVIEW OF THE ASSERTED PATENTS**, in compliance with Civil Local Rule 5-1(i)(3), attest that all other signatories listed, and on whose behalf the filing is submitted, concur to the filing's content and have authorized the filing.

Date: October 27, 2021

/s/ Erik J. Halverson
Attorney